OLR Bill Analysis

sHB 5053

AN ACT STRENGTHENING CONNECTICUT'S INSURANCE INDUSTRY COMPETITIVENESS.

SUMMARY:

This bill establishes a process by which a Connecticut mutual insurer can reorganize itself as a stock insurer owned, directly or indirectly, by a mutual holding company. It requires the insurer to develop a plan, which is subject to approval by its board of directors, the insurance commissioner, and the insurer's members. It prescribes the powers and duties of the mutual holding company and prohibits it from engaging in the insurance business.

The bill regulates how an insurer or intermediate holding company can offer voting stock, once the reorganization goes into effect, to a person other than the mutual holding company or a subsidiary it wholly owns.

The bill prescribes how (1) holding companies can merge, (2) a mutual insurance company can reorganize with an existing Connecticut or out-of-state holding company, and (3) a holding company can convert into a stock corporation. It establishes limits on when certain actions can be brought against the affected companies. The bill generally makes information, documents, and copies connected with these provisions confidential and exempt from the Freedom of Information Act. The bill allows the commissioner to adopt implementing regulations.

Under current law, an alien (non-U.S.) insurer can enter the United States through another state and establish its U.S. branch there. The bill establishes a process by which alien insurers can use Connecticut as their "state of entry" to transact insurance business through a U.S. branch. To do this, the alien insurer must obtain a Connecticut

insurance license and establish a trust account funded at or above the level required for a Connecticut insurer. The resulting branch is subject to all state insurance laws that apply to an insurer domiciled in this state, unless otherwise provided.

The bill specifies application and licensing requirements for the alien insurer. The insurer must create a deed of trust in connection with the trust account. The deed is subject to the insurance commissioner's approval. The bill restricts the types of business the branch can engage in. It allows the commissioner to liquidate the branch or revoke the alien insurer's license if any trustee violates or refuses to comply with the bill's requirements and grants him other powers.

The branch must submit annual and quarterly reports to the Insurance Department and the National Association of Insurance Commissioners (NAIC).

The bill establishes a procedure under which the alien insurer can domesticate its U.S. branch. Domestication is a reorganization of the branch in which a Connecticut insurer succeeds to all of the branch's business and assets and assumes all of its liabilities.

The bill allows the commissioner to apply to the courts to rehabilitate a U.S. branch that, without his approval, (1) transfers or attempts to transfer its entire property or business in violation of the bill or (2) enters into any transaction that effectively merges, consolidates, or reinsures substantially all of its property or business in or with another person .

The bill modifies the surplus that an alien insurer operating under existing law must have in its trust account.

It also makes minor, conforming, and technical changes.

EFFECTIVE DATE: Upon passage

REORGANIZATION OF MUTUAL INSURER

§ 2(b)(1-3) — Reorganization Plan and Approval by the Board

To take advantage of the bill, a Connecticut mutual insurer must develop a plan that describes why it is reorganizing. The plan must provide for:

1. amending the insurer's articles of incorporation to reorganize it into a Connecticut stock corporation, including any provisions governing an initial voting stock offer;

2. forming a mutual holding company that will acquire, directly or through intermediate stock holding companies, at least 51% of the voting stock of the reorganized insurer;

3. the succession of the insurer's rights, properties, debts obligations, and liabilities; and

4. any proposed fees, commissions, or other consideration for people aiding, promoting, or assisting the reorganization.

A mutual holding company must be organized using the process established by the bill. An intermediate stock holding company is an institution that (1) is at least 51% owned, directly or through another intermediate stock holding company, by a mutual holding company and (2) owns, directly or indirectly, at least 51% of the voting stock of at least one reorganized insurer.

The plan must provide that:

1. the insurer's members become members of the holding company and

2. members with policies issued by the insurer in force on the reorganization's effective date have equity rights (rights to own stock) and membership interests in the holding company.

Under the bill, membership interests are rights other than equity rights or those expressly and solely conferred under a policy. The plan may include provisions limiting any person from directly or indirectly acquiring or offering to acquire 10% or more of any class of voting

stock of the reorganized insurer or any entity that controls it.

The reorganization plan must be approved by vote of three-fourths of the board of directors.

§ 2(b)(4), 3(c) — Submission to the Commissioner

Accompanying Documents. Once the board approves the plan, the insurer must submit an application to the commissioner that is executed by an authorized officer of the insurer. The application must be accompanied by original or true and correct copies of the following documents:

1. the reorganization plan;

2. the proposed articles of incorporation and by-laws of each corporation that will be a constituent corporation of the reorganization;

3. the names and biographies of the officers and directors of each of these corporations;

4. the resolution of the insurer's board of directors, certified by its secretary, authorizing the reorganization;

5. financial statements, in a form acceptable to the commissioner, implementing the reorganization for the holding company and any corporations that will be part of the reorganization and that will experience a change in capitalization due to the reorganization;

6. a draft of materials to be mailed to members seeking their approval of the plan, including a summary of the reorganization plan; and

7. other relevant information that the commissioner requires.

Articles of Incorporation. The mutual holding company's articles of incorporation must include provisions that:

1. state it is organized under the bill;

2. one of its purposes is to own, directly or through one or more intermediate holding companies, at least 51% of the voting stock of one or more reorganized insurers;

3. the mutual holding company itself is not authorized to issue stock;

4. its members have the rights specified in the bill and the holding company's articles of incorporation and by-laws; and

5. in any liquidation or rehabilitation proceeding brought against the reorganized insurer, the assets and liabilities of the mutual holding company that holds the insurer can be included in the estate of a reorganized insurer.

§ 2(c), (d), (e)(h) — Plan Approval

Public Hearing. The commissioner must hold a hearing on (1) the reasons for and purposes of the mutual insurer's reorganization, (2) the fairness of the plan's terms and conditions, and (3) whether the reorganization is in the mutual insurer's best interest, fair and equitable to its policyholders, and not detrimental to the insuring public. The directors, officers, employees, and policyholders of the reorganizing insurer can appear and speak at the hearing.

The reorganizing insurer must mail a notice of the time, place, and purpose of the hearing to each eligible policyholder. The notice must go to the policy holder's last-known address as shown on the reorganizing insurer's records. The notice must be mailed at least 60 days before the hearing and be preceded or accompanied by (1) a true and complete copy of the plan or a summary of it approved by the commissioner and (2) other explanatory information as the commissioner requires.

In addition, the reorganizing insurer must publish a notice of the time, place, and purpose of the hearing in three newspapers, one in the county where it has its principal office and two in other cities in or

outside the state approved by the commissioner. The newspaper publications must be made between 15 and 60 days before the hearing and be in a form approved by the commissioner.

Commissioner's Approval of the Plan. The commissioner must approve or disapprove the plan within 60 days after the public hearing. He must approve the plan in writing if he finds that it:

1. is in the best interests of the reorganizing insurer;
2. is fair and equitable to the insurer's members;
3. enhances the reorganizing insurer's operations;
4. will not substantially lessen competition in any line of insurance business;
5. when completed, will provide for the reorganized insurer's paid-in capital stock to at least equal to the minimum paid-in capital stock and net surplus required of a new Connecticut stock insurer upon its initial authorization to transact similar types of insurance; and
6. complies with the bill's requirements.

If the commissioner determines the plan does not meet these conditions, he may ask the reorganizing insurer to modify it. This does not prevent the reorganizing insurer from withdrawing the plan as provided by the bill.

A disapproval of the plan must be in writing and describe the reasons for denial. The reorganizing insurer has 15 days to request a hearing before the commissioner, which must be held within 15 days after the request.

The commissioner may use department personnel or private consultants to help review the plan. The mutual insurer must pay all costs of the determination, including the cost of department staff.

No one may receive any fee, commission, or other consideration,

other than his or her usual salary and compensation, to aid, promote, or assist in the reorganization, except as described in the approved plan. This does not prohibit paying reasonable fees and compensation to directors and officers who act as attorneys, accountants, or actuaries or provide other services in the independent practice of their professions.

Approval by Members. After the commissioner approves the plan, the reorganizing insurer must file it with the commissioner. It must then be approved by a vote of at least two-thirds of the members of the reorganized insurer voting at a meeting called for that purpose. The board of directors, its chairperson, or the president of the reorganizing insurer must call the meeting, which can be held no earlier than 30 days after the public hearing.

The reorganizing insurer must mail a notice of the date, time, place, and purpose of the meeting to policyholders at their last-known addresses, as shown on its records. The notice must be mailed at least 60 days before the meeting date and may be combined with the public hearing notice. It must be preceded or accompanied by (1) a true and complete copy of the plan or by a summary of it approved by the commissioner, (2) the financial statements described below, (3) a description of material risks and benefits to policyholders' interests, (4) any information about an initial stock offering included in the plan of reorganization, and (5) other explanatory information as the commissioner requires.

Each member entitled to vote on the plan of reorganization can vote by written ballot, in person, by mail, or by a proxy he or she appoints. The people entitled to vote are those whose names appear on the reorganizing insurer's records as policyholders on the date the board of directors approved the plan.

The commissioner can, among other things, supervise and prescribe the voting procedures to the extent, consistent with the bill's provisions, he deems this necessary to insure a fair and accurate vote. He can supervise and regulate:

1. the determination of the policyholders entitled to notice of and to vote on the proposal;

2. how notice of the proposal is given;

3. the receipt, custody, safeguarding, verification, and tabulation of proxy forms and ballots; and

4. the resolution of disputes.

Withdrawal or Amendment of the Plan. The mutual insurer may withdraw or amend the plan any time before the reorganization goes into effect. Doing so requires a vote 3/4ths of the board of directors and, for amendments, the commissioner's approval.

Under the bill, a "plan" includes any amended plan. No amendment may change the (1) adoption date of the plan of reorganization or (2) plan in a way that the commissioner determines harms the reorganizing insurer's policyholders.

If the amendment is submitted after the hearing on the original plan, the commissioner must hold another hearing on the amended plan, subject to the notice requirements described above. If the plan is amended after it has been approved by the members, the members have to ratify the amended plan using the same process as for the original plan.

The insurer must submit the amended amendment to the commissioner for approval. After he approves it, the insurer must file the approved amended plan with the commissioner.

§ 2(f)(g), 3(b)(g) — Effects of Reorganization

Once the members approve the reorganization, the commissioner must issue a new certificate of authority to the reorganized insurer and approve the articles of incorporation of the mutual holding company and the reorganized insurer. He must also provide certificates of approval for the articles of incorporation to the insurer and the holding company. The reorganized insurer can continue to use "mutual" as

part of its name unless the commissioner determines it would mislead or deceive the public.

The plan goes into effect (1) once the articles of incorporation of the mutual holding company and amended articles of incorporation of the reorganized insurer are filed with the secretary of the state or (2) on a later date as specified in the plan and the amended articles of incorporation of the reorganized insurer. The later date may not be more than 30 days after the mutual holding company files its articles of incorporation.

Once the plan of reorganization goes into effect:

1. the reorganizing insurer immediately becomes a Connecticut stock insurer and continues the corporate existence of the reorganizing insurer;

2. any person's right to (a) vote on any matter concerning the reorganized insurer or (b) share in a distribution or receive payment based on a surplus in a conservation, liquidation, or dissolution proceeding under the articles of incorporation or by law, is extinguished, but rights expressly conferred solely by the terms of a policy are not extinguished;

3. the members of the reorganizing insurer immediately become members of the holding company, but (a) the rights of a person as a member continue only so long as the related policy remains in force and (b) for group annuity contracts issued by a mutual life insurer, only the group policyholder becomes a member of the holding company;

4. members who have voting rights under policies issued by the reorganizing insurer as of the reorganization's effective date have equity rights in the holding company so long as the related policy remains in force;

5. the holding company must hold all of the voting stock initially issued by the reorganized insurer, directly or through one or

more intermediate stock holding companies; and

6. holders of policies with voting rights issued by the reorganized insurer after the effective date are members and have equity rights in the holding company.

Mutual holding companies must comply with applicable provisions of corporation law. Membership interests in the holding company do not count as securities for purposes of securities law. A description of these interests and related factual disclosures do not violate the law against offering inducements to buy insurance and their receipt does not violate the law that prohibits receiving such inducements.

§ 2(g)(3) —Ownership of Reorganized Insurer

Once the reorganization goes into effect, (1) the holding company or an intermediate stock holding company must own at least 51% of the issued and outstanding voting stock of the reorganized insurer and (2) the holding company or another intermediate stock holding company must own at least 51% of the issued and outstanding voting stock of any intermediate stock holding company. For these calculations, any issued and outstanding securities of the reorganized insurer or any intermediate stock holding company that are convertible into voting stock are considered issued and outstanding voting stock.

§ 3(d), (e), (h), (j)(5) — Powers and Duties of Mutual Holding Companies

Structure. A holding company may control, directly or indirectly, multiple subsidiaries, including multiple intermediate stock holding companies. An intermediate stock holding company may control, directly or indirectly, multiple subsidiaries, including multiple reorganized insurers. A holding company and its subsidiaries and affiliates are considered members of an insurance holding company system, subject to existing law governing these systems, unless they conflict with the bill's provisions.

Directors. The holding company's articles of incorporation or bylaws may divide its directors into two or more classes whose terms of office expire at different times. No term may run more than six

years. The term of office is one year unless otherwise specified in the articles or bylaws.

When a director's term ends, he or she continues to serve until a successor is elected and qualified. If a vacancy occurs before a director's term ends, the other directors must fill the vacancy by a majority vote, regardless of any quorum requirements. The new director serves until the next annual meeting.

Annual Meetings. A holding company must hold an annual meeting. It must notify each member of the meeting at his or her last-known mailing address at least 60 days before the meeting.

Unless the articles of reorganization or the insurer's bylaws provide otherwise, each member of the holding company is entitled to one vote. Members may vote by proxy dated and executed within 90 days before the meeting where they will be used. The proxies must be returned to the company and recorded on its books no later than seven days before the meeting.

A majority vote of the members is sufficient to approve an item unless the law or the holding company's articles of incorporation require a greater percentage.

Bylaw Amendments. Within 30 days after amending its bylaws, the holding company must file a copy certified by its secretary under the corporate seal with the commissioner.

Transfers of Assets. Once the reorganization goes into effect, a reorganized insurer may, pursuant to the reorganization plan or with the commissioner's prior approval, transfer assets or liabilities to the holding company or an entity the holding company owns or controls. The assets and liabilities can include one or more of the insurer's subsidiaries. But in any transfer, in a single instance or in the aggregate, the liabilities transferred may not be greater than the assets transferred. The commissioner must approve the proposed transfer unless he finds it would materially harm the insurer's ability to meet its obligations under its policies. Under the bill, the rules governing

transactions with an insurance company holding system do not apply to these transfers.

The insurer cannot acquire subsidiaries without notice to and review by the commissioner if its total adjusted capital is less than three times its authorized minimum capital, adjusted for risk, at the end of any calendar year after the reorganization goes into effect. The prohibition runs as long as the company does not have the required level of capital.

§ 3(a), (f), (i) — Prohibitions on Mutual Holding Companies

The holding company may not:

1. engage in the insurance business;

2. pay income, dividends contingent on an apportionment of profits, or any other distribution of profits, except to extent provided in its articles of incorporation or as otherwise directed or approved by the commissioner; or

3. transfer its domicile to another state, without the commissioner's approval, for five years after the reorganization goes into effect

§ 12 — Actions Involving the Reorganized Insurer

For 10 years from the effective date of a reorganization plan, if any proceedings are brought naming a Connecticut stock insurer that is a party under (1) the plan or (2) the existing law governing the liquidation and rehabilitation of insurers, the mutual holding company formed under the reorganization must become a party to the proceedings.

The assets of the mutual holding company, including its interest in an intermediate holding company, are considered assets of the estate of the reorganized insurer to the extent necessary to satisfy claims against the reorganized insurer by specified persons whose claim priorities are covered by the existing law. But, a mutual holding company's contribution to the estate of a reorganized insurer may not exceed the value of assets, net of liabilities, that the reorganized insurer

transferred to it or to one or more persons owned or controlled by the mutual holding company. Claims of persons who are members of the mutual holding company have the same priority as members of a mutual insurer authorized to do the same kinds of business as the reorganized insurer would have upon its liquidation under existing law.

A mutual holding company may not dissolve, liquidate, or wind up and dissolve without the prior written approval of the commissioner or the court pursuant to proceedings brought under the existing law.

§§ 4(b), 6 — Reorganized Insurers

Amendments. A reorganized insurer may amend its articles of incorporation in the same way as other stock corporations can after the reorganization goes into effect.

An insurer whose reorganization has gone into effect can amend its reorganization plan, subject to the same limitations as amendments to the original plan. An amendment requires:

1. the approval by a majority of the reorganized insurer's board of directors and

2. submission of the proposed amendment to the commissioner in the same way the original plan was submitted.

In addition, the amendment must be approved by a majority of holding company members who were eligible to vote on the original plan as members of the former insurer. If the amendment would harm the rights of some but not all classes of members, only members in a potentially harmed class can vote. Otherwise the ratification procedure is similar to that for the original plan, although there are no specific notice requirements.

As was the case for the original plan, the board of directors can, by majority vote, amend or withdraw the plan amendment. The insurer must submit the amendments to the commissioner for approval.

An amendment that complies with the above requirements goes into effect when filed with the commissioner.

Provisions for Mutual Life Insurers. If the insurer is a mutual life insurer, the equity interest of the policyholders of the reorganized insurer must equal, in aggregate, the entire capital and surplus of the mutual holding company, less any funds federal law requires it to hold in segregated accounts. This equity interest is used to determine the amount of consideration paid to policyholders if the holding company converts to a stock company, as described below.

Once the reorganization goes into effect, the insurer generally must establish a separate account ("closed block") for policyholder dividend purposes. The closed block must consist of all the insurers' participating individual policies (1) in force on the reorganization's effective date and (2) for which the insurer had an experience-based dividend scale payable in the year the plan of reorganization was adopted by the insurer's board of directors. The insurer must allocate its assets to these policies in an amount that produces cash flows, together with anticipated revenues from the closed-block business, the insurer expects to be sufficient to support the closed-block business. This amount must provide for (1) paying claims, expenses, and taxes specified in the reorganization plan and (2) continuing dividend scales in effect on the date the insurer's board adopted the plan, if the experience underlying such scales continues. No policies entering into force after the effective date can be included in the closed block.

The insurer may, with the commissioner's approval, establish conditions under which it may cease to maintain the closed block and allocation of assets to it. But the policies constituting the closed block business remain obligations of the insurer and the board of directors must apportion the dividends on the policies in accordance with the terms of the policies and applicable provisions of any law.

Alternatively, the insurer can provide another practice that protects the contractual rights of individuals who had policies in force when the reorganization went into effect, if the commissioner determines

this is substantially as protective for the policyholders.

Periodically, an independent accounting or actuarial firm must report to the commissioner and the boards of directors of the holding company and the insurer on whether or not the closed block and related assets or alternative practice has been administered according to the reorganization plan. This report must be made three years after the year the reorganization goes into effect and every three years thereafter, or more frequently as determined by the commissioner. The firm must consider the dividend payments to policyholders resulting from the closed block and other relevant factors. The insurer must pay the expenses incurred in retaining the firm. The report must be completed and delivered to the commissioner and the boards by the close of business on April 1 following the end of the period for which a report is being provided.

§ 7, 8(b)(c) — Stock Offerings

The bill regulates how a reorganized insurer or intermediate holding company can offer voting stock, for the first time after the reorganization goes into effect, to a person other than the mutual holding company or a subsidiary it wholly owns. Voting stock includes any securities of the insurer or any intermediate holding company that are convertible into voting stock.

Stock purchase rights must have a 50-share minimum purchase limit. Under the bill, this is a nontransferable right granted to each policyholder of the reorganized insurer who has been a policyholder for at least one year prior to the reorganization's effective date, to acquire stock in the reorganized insurer if it conducts an initial public offering of voting stock or in any intermediate stock holding company that conducts an initial public offering of voting stock.

The price per share must equal the public offering price. If the exercise of a stock purchase right results in one person owning more than 50% of the shares being offered to the public (or a smaller percentage approved by the commissioner) exercising this right is subject to proration, but not below the 50-share minimum. A stock

purchase right is but not below any exclusion or limit authorized by law that apply to particular classes of policyholders.

The commissioner must approve the application unless he finds that (1) a public offering would not be conducted in a way generally consistent with customary practices for initial public offerings to the extent they are reasonably comparable or (2) any other offering would harm the members of the mutual holding company. These provisions do not prohibit the reorganized insurer or intermediate holding company filing a registration statement with the Securities and Exchange Commission and the secretary of the state before the commissioner's approval.

The commissioner may use department personnel or consultants to help review the offering to determine whether it meets these requirements. The issuer must pay all costs determination, including the cost of department staff.

If a mutual holding company causes an intermediate holding company or insurer to conduct an initial public offering, private equity placement, or issuance of voting stock or securities convertible into voting stock, the mutual holding company must cause each eligible person to receive stock purchase rights in connection with the initial offering or issuance. This requirement is subject to any limitations under law applicable to particular classes of policyholders. The requirement does not apply if a committee of the mutual holding company's outside directors determines, by vote of at least two-thirds of its members, that a stock purchase rights offering would not be in the members' best interests. This determination is subject to the commissioner's approval.

The mutual holding company, the intermediate holding company, or insurer may issue stock of the intermediate holding company or the insurer to a qualified trust established in connection with an employee stock ownership plan or other employee benefit plan established for the benefit of company's or insurer's employees. No individual may receive more than 12.5% of the stock. Directors who are not employees

may not receive more than 2.5% of the stock individually or 15% in the aggregate. No individual can own more than 18% of the stock unless the commissioner raises this limit.

The voting shares initially issued to employee stock ownership plans or other employee benefit plans cannot, in the aggregate, exceed 5% of the voting shares initially issued.

An officer or director of a mutual holding company, intermediate holding company, or insurer may not sell any voting stock or securities convertible into voting stock he or she holds for at least one year following the date of the initial offering or issuance of the securities. This prohibition does not apply if the officer or director dies or becomes disabled.

§ 8(a)(d) — Stock Options and Ownership Limits

The bill limits when an intermediate holding company or the insurer may award stock options or stock grants to officers or directors of the mutual holding company, an intermediate holding company, or the reorganized insurer. The award cannot be made until six months after the completion of an initial public offering, private equity placement, or the first issuance of public or private stock or securities convertible into voting stock of the insurer or intermediate company to any person other than the mutual holding company or an intermediate holding company. But, if an insurer or its intermediate holding company distributes stock purchase rights to the policyholders of an insurer in connection with a public offering of stock, their directors and officers who are policyholders of the reorganized insurer must receive and may exercise stock purchase rights on the same basis as all other policyholders.

Until two years after this six-month period, the officers, directors, and outside directors of (1) the mutual holding company, (2) an intermediate holding company, and (3) the insurer may not own, in the aggregate, more than 5% of the voting stock of the intermediate holding company or the reorganized insurer. Thereafter, they may own no more than 18% of that voting stock. The commissioner may, in

the event of a distress situation, find that their aggregate ownership of more than 18% is necessary and appropriate.

No person may directly or indirectly acquire or offer to acquire ownership of more than 10% of any class of the voting stock of the insurer, any intermediate holding company, or any other institution that directly or indirectly owns a majority of the voting securities of the insurer without the commissioner's prior approval.

The above provisions do not prohibit officers, directors, employees, employee stock ownership plans, or other employee benefit plans from buying, with cash, voting stock issued by an intermediate holding company or insurer. These purchases must be (1) made in accordance with reasonable classifications of these individuals and plans and (2) at the same price offered to the public in any public offering. The above provisions also do not prohibit a mutual holding company, intermediate holding company, or insurer from establishing a stock option, incentive, or share ownership plan customary for publicly traded companies, subject to the bill's limitations.

§§ 9, 15 — Merger or Consolidation of Holding Companies and Their Subsidiaries

The bill prescribes how two or more mutual holding companies can merge or consolidate. These provisions do not authorize the merger or consolidation of stock companies with mutual holding companies.

The bill allows two or more mutual holding companies to merge or consolidate under the laws of any U.S. state into a mutual holding company incorporated under the laws of that state. At least one of the merging companies must be a Connecticut company. The resulting company may be a continuing corporation under the name of one or more of the merged or consolidated companies or a new company.

If the continuing or new company will be a Connecticut company, (1) it is subject to the bill's provisions, (2) its name is subject to the commissioner's approval, (3) the members of any mutual holding company whose existence will cease once the merger or consolidation goes into effect become members of the continuing mutual holding

company, and (4) all persons with equity rights in any mutual holding company whose existence ceases when the merger or consolidation goes into effect must have equity rights in the continuing mutual holding company.

The merging or consolidating companies must enter into a written agreement prescribing the action's terms and conditions. A majority of the board of each participating Connecticut company must approve the action. The agreement is subject to the commissioner's written approval. He must consider the fairness of the agreement's terms and conditions, whether the interests of the members of each Connecticut mutual holding company that is a party to the agreement are protected, and whether the proposed merger or consolidation is in the public interest.

Each of the merging or consolidating companies must call a special members' meeting to present and hold a vote on the agreement. They must provide notice of the meeting in a way the commissioner prescribes. The agreement must be approved by a vote of two-thirds of the members of each company who are present and voting at the meeting.

If the continuing or new mutual holding company will be a Connecticut company, the agreement must be (1) executed in duplicate by each company's president and secretary under its corporate seal, (2) accompanied by copies of each company's resolutions authorizing the merger or consolidation and the execution of the agreement attested by each company's recording officer, and (3) submitted to the commissioner with the required records.

If it appears to the commissioner that each company has complied with these requirements, he may certify and approve the agreement. He must file one of the duplicates with the secretary of the state. She must record the agreement and issue a certificate of reincorporation to the continuing or new company with the powers retained and specified in the agreement. The commissioner must keep the other duplicate. An agreement does not take effect until it has been filed

with the secretary of the state.

If the new or continuing company is a Connecticut company, after the merger or consolidation all rights and properties of the several companies accrue to and become the rights and property of the continuing or new company, which succeeds to all the obligations and liabilities of the merged or consolidated companies as if they had been incurred or contracted by it.

If the continuing or new company will be an out-of-state company, the agreement and other information the commissioner requires must be filed with him and may not be executed until he approves them. Upon the commissioner's approval, the new or continuing company must file documentary evidence with the commissioner showing the date when the merger or the consolidation will become effective. If the commissioner finds the agreement has been filed in accordance with these provisions, he must file a certificate with the secretary noting the merger or consolidation and its effective date. The corporate existence of the Connecticut mutual holding company ceases on the effective date.

No action or proceeding pending in any Connecticut court at the time of the merger or consolidation in which a Connecticut company is or may be a party can be abated or discontinued because of the merger or the consolidation. It may be prosecuted to final judgment in the same manner as if the merger or the consolidation had not taken place. Alternatively, the court where the action or proceeding is pending may substitute the continuing or new company in place of the Connecticut company.

In addition, a Connecticut or out-of-state subsidiary of an existing Connecticut mutual holding company may, with the commissioner's prior approval, merge with an out-of-state mutual insurer. It must do so using the existing law's procedures for mergers between Connecticut insurers and out-of-state or alien insurers.

§ 10 — Reorganizations into Existing Holding Companies

The bill allows a Connecticut mutual insurance company to reorganize with an existing Connecticut or out-of-state mutual holding company. To do this, the reorganization plan of the Connecticut mutual insurer must provide that (1) it will become a Connecticut stock insurer, (2) its members will become members of the mutual holding company, (3) owners of policies in force on the date the reorganization goes into effect have equity rights in the mutual holding company, and (4) the mutual holding company will acquire, directly or through one or more intermediate stock holding companies, at least 51% of the reorganized insurer's voting stock.

With the commissioner's approval, an existing Connecticut mutual holding company may:

1. acquire direct or indirect ownership of a converting out-of-state mutual insurer that becomes a stock insurer in compliance with the law of its state of domicile or

2. grant membership interests and equity rights to the members or policyholders of an out-of-state mutual insurer that merges with a direct or indirect Connecticut or out-of-state subsidiary of the Connecticut mutual holding company and the subsidiary may, in turn, merge with the out-of-state mutual insurer pursuant to existing law.

In determining whether to approve these steps, the commissioner may consider (1) the fairness of the transaction's terms and conditions, (2) whether the interests of the members of the Connecticut holding company are protected, and (3) whether the transaction is in the public interest.

§ 11 — Conversion of Holding Company into a Stock Company

Conversion Plan. The bill allows a Connecticut mutual holding company to become a Connecticut stock corporation under a plan of conversion. The plan must include the reasons for the proposed conversion and provide for amending the holding company's articles of incorporation to effect it.

The plan must give each person holding equity rights in the company appropriate consideration in exchange for these rights. The total consideration must equal the company's capital and surplus, less any money federal law requires to be held in segregated accounts. The amount of the consideration must be determined under a fair and reasonable formula approved by the commissioner.

If the conversion plan calls for the mutual holding company to be a surviving corporation, the consideration to eligible policyholders must be stock, cash, or other consideration approved by the commissioner. Distributing (1) all of the company's stock to eligible policyholders or (2) other consideration of equivalent value to certain eligible policyholders meets this requirement. If the mutual holding company will not be a surviving corporation, payment in permitted forms must be distributed to the eligible policyholders.

The conversion plan also must give each person holding equity rights a preemptive right to acquire his or her share of the proposed capital stock of the converted company. These person can use their consideration to purchase the stock. But, the plan can provide that (1) the person cannot buy or receive stock if the stock has an aggregate subscription price of $2,000 or less and (2) the preemptive right does not apply in jurisdictions where issuing stock (a) is impossible, (b) would involve unreasonable delay, or (c) would require the converting company to incur unreasonable costs. In such cases, the person must be paid in cash.

If the equity holders are granted stock, or other consideration the commissioner approves, the plan must provide that (1) no member or holders of equity in the converting company have preemptive rights to acquire any of the proposed stock of the converted company, proposed parent, or other corporation or (2) the preemptive rights are on other terms approved by the commissioner.

Anyone may participate in the distribution of consideration and buy the stock if his or her name appeared on the converting company's records as holding equity rights on (1) the December 31 before the

conversion and (2) the date the company's board of directors first voted to convert.

The plan also must provide for:

1. offering shares to persons holding equity rights in the mutual holding company at a price greater than that charged others;

2. paying such persons consideration in cash, securities, a certificate of contribution, additional insurance under policies issued by a reorganized insurer, other consideration, or any combination of these;

3. any proposed fees, commission, or other consideration to be paid to people aiding, promoting, or assisting the conversion; and

4. the effective date of the conversion.

The plan may restrict anyone from directly or indirectly acquiring or offering to acquire 10% or more of any class of voting stock of the converted company or any entity that controls it.

No one may receive any fee, commission, or other consideration, other than his or her usual salary and compensation, to aid, promote, or assist in the conversion, except as described in the approved plan. This does not prohibit paying reasonable fees and compensation to attorneys, accountants, and others who are directors or officers of the converting company for services they perform in the independent practice of their professions.

These provisions do not bar the management or an employee group of a converting company, an intermediate holding company, or the reorganized insurer from buying, with cash, stocks not taken by people with preemptive rights. The management or employee group must pay the same price offered to people holding equity rights.

To approve the conversion plan, the insurance commissioner must find that the company has not (1) reduced, limited, or affected the

number or identity of its members or persons holding equity rights entitling them to participate in the plan by the Connecticut company by reducing the volume of new business written, cancelling policies, or other means or (2) otherwise given or sought or attempted to give the company's management any unfair advantage through the plan by other means.

The bill's provisions do not prohibit the management or employee group of the converting company, intermediate holding company, or reorganized insurer from buying, with cash, stock not taken by preemptively by people holding equity rights. These purchases must be (1) made in accordance with reasonable classifications of these individuals and (2) at the same price offered to the public in any public offering.

A disapproval of the plan must be in writing, describing the reasons for the denial. The company has 15 days to request a hearing before the commissioner, which must be held within 15 days after the request.

The bill requires the company to file the approved plan with the commissioner and submit it to a vote of its members in the same way as described above for a mutual insurer reorganization plan.

If the members approve the plan, the conversion goes into effect on the date specified in the plan. At that point, the converting company becomes a Connecticut stock corporation and its rights and properties are automatically transferred to the corporation, which also succeeds to all of the converting company's obligations and liabilities. In addition, all membership interests and equity rights in the Connecticut mutual holding company are extinguished.

§ 12(b) — Limits on Actions

Time Limits. Generally, actions concerning any proposed or approved plan of reorganization or any plan amendment or proposed plan amendment, must begin (1) one year after the plan or amendment is filed with the commissioner or (2) if the plan or amendment has gone into effect, six months from the effective date of the plan or

amendment, whichever is later. If the plan or amendment is withdrawn, the actions must begin within six months from the withdrawal date.

Actions arising out of a transfer of assets or liabilities or an offering of voting stock that was not contemplated by the plan must begin within one year from the transfer or offering.

Actions concerning any proposed or approved plan of conversion and related acts must begin within one year after the plan is filed with the commissioner or six months from its effective date, whichever is later.

Security. In any of the above actions, any party bringing the suit, under certain circumstances, must give adequate security for the damages and reasonable expenses, including attorneys' fees, that defendants may incur as a result of, or in connection with, the action or for which the company may become liable. This provision applies when (1) the mutual holding company, reorganizing insurer, reorganized insurer, or an intermediate stock holding company makes a motion and (2) the court finds there is a substantial likelihood that the action is brought without merit and with an intention to delay or harass. The court determines the amount to which the mutual holding company, reorganizing insurer, reorganized insurer or an intermediate stock holding company has access upon the termination of the action. The court can increase or decrease the amount of security upon a showing that it has or may become inadequate or excessive.

Stays. Any action seeking a stay, restraining order, injunction, or similar remedy to prevent or delay the closing of any transaction under the bill or a transaction under a reorganization or conversion plan must begin within 30 days after the commissioner approves the transaction or plan.

Any action or proceeding against the commissioner or other government officer or body regarding orders issued or actions taken under the bill must begin within 30 days after the order or action.

§ 13 — Confidentiality of Information

The bill generally makes information, documents, and copies of them obtained by or disclosed to the commissioner or any other person in the course of preparing, filing, and processing an application under the bill:

1. confidential by law and privileged,
2. not subject to disclosure under the Freedom of Information Act,
3. not subject to subpoena, and
4. not subject to discovery or admissible in evidence in any civil action.

The commissioner may make this information, documents, and copies public without the relevant insurer's prior written consent, only if he (1) gives the insurer and its affected subsidiaries and affiliates notice and opportunity to be heard and (2) determines that the interests of members, policyholders, security holders, or the public will be served by publishing the information, documents, and copies. If he does, the commissioner may publish all or any part of the information, documents, and copies in a way he considers appropriate. The commissioner may use the information, documents, and copies to further any regulatory or legal action brought as part of the commissioner's official duties.

The confidentiality provisions do not apply to information or documents distributed to, or filed or submitted as evidence in connection with, a public hearing under the bill.

§§ 16-26 — ALIEN INSURERS ESTABLISHING BRANCHES IN CONNECTICUT

§ 18(b) — Application Requirements

Before authorizing an alien insurer to enter the U.S. through Connecticut, the commissioner must, in addition to the existing requirements of state insurance law, require the alien insurer to:

1. obtain a license as an insurer and submit an English translation, as necessary, of any of the documents needed to comply with this requirement and

2. submit to an examination of its affairs at its principal U.S. office, although the commissioner may accept a report of the insurance supervisory official of the insurer's home jurisdiction.

§ 20(a)(b) — Licensing

Before issuing any new or renewal license to a branch, the commissioner may require satisfactory proof, (1) in the insurer's charter, (2) by an agreement evidenced by a certified resolution of its board of directors, or (3) otherwise as the commissioner may require, that the branch and the insurer will not engage in any insurance business in violation of the bill or not authorized by its charter.

The commissioner must renew a branch's license if he is satisfied that (1) neither the insurer nor the branch is in violation of the bill's requirements and (2) the renewal will not be hazardous or prejudicial to the best interests of the people of this state.

§ 20(c)(d) — Restrictions on Types of Business

The commissioner cannot authorize a branch to transact (1) any kind of insurance business in which Connecticut insurers may not engage or (2) the business of insurance in Connecticut if it transacts, anywhere in the United States, any type of insurance or incidental business other than the business it seeks to transact in Connecticut. For example, if a branch seeks to provide only life insurance in Connecticut, it cannot provide health insurance in another state.

The commissioner cannot authorize or reauthorize a branch to transact business in Connecticut if it fails to (1) substantially comply with any of the bill's provisions the commissioner determines are needed to protect the interests of its U.S. policyholders or (2) keep complete and accurate records of its insurance transactions, which it must make available for the commissioner's inspection at its principal office.

§ 18(a) — Trust Account

The alien insurer must establish a trust account, pursuant to a trust agreement the commissioner approves, with a U.S. financial institution in an amount at least equal to the (1) minimum capital and surplus or (2) minimum capital, adjusted for risk, whichever is greater, that a Connecticut insurer licensed for the same kind of insurance must maintain. Generally, the alien insurer must maintain this minimum amount in the account at all times. But, the deed of trust or an amendment to it may provide for withdrawals under specified circumstances described below.

§ 18(c)(1)(4) — Deed of Trust

The trust agreement must describe its terms in a deed of trust. The deed and subsequent amendments to it must be authenticated in a way the commissioner prescribes.

The deed of trust must:

1. vest legal title to trust assets in the trustees and their lawfully appointed successors;

2. require all assets deposited in the trust to be continuously kept in the United States;

3. provide for substitution of a new trustee in case of a vacancy, subject to the commissioner's approval;

4. require the trustees to continuously maintain a record sufficient to identify the fund's assets;

5. require trust assets to consist of cash or investments, or both, and accrued interest if collectable by the trustees;

6. require the trust to be for the exclusive benefit, security, and protection of the U.S. branch's policyholders, or U.S. policyholders and creditors; and

7. require that the trust be maintained as long as the alien insurer has any outstanding liability arising out of its U.S. insurance

transactions.

In addition, the deed of trust must provide that the trustees may not make or permit any asset withdrawals without the commissioner's approval. However, withdrawals may be made without approval to:

1. make deposits required by law in any state for the security or benefit of all U.S. policyholders, or the branch's U.S. policyholders and creditors;

2. substitute other assets permitted by law and at least equal in value and quality to those withdrawn, upon the specific written direction of the branch manager when duly empowered and acting under general or specific written authority previously given or delegated by the branch's board of directors; or

3. transfer assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

Assets can also be withdrawn without the commissioner's approval if (1) they are deposited in another state and (2) the deed of trust requires the written approval of that state's insurance regulatory official for further withdrawals. The minimum amount of trust assets must still be maintained and the U.S. branch manager must notify Connecticut's insurance commissioner of the nature and amount of the withdrawal.

In addition, the deed of trust may provide that income, earnings, dividends, or interest accumulations on the fund's assets may be paid to the branch manager upon request as long as the total trust assets are at least the amount required by the bill.

§ 18(c)(2)(3) — Commissioner's Approval of Deed of Trust

A deed of trust or amendment to it does not go into effect until the commissioner approves it. The commissioner cannot approve the document unless he finds that it is (1) sufficient in form and conforms with applicable laws and (2) adequate to protect the interests of the trust's beneficiaries. He also must find that the account's trustees are

eligible to serve in this role.

The commissioner can withdraw his approval if he finds, after notice and hearing, that the deed of trust no longer meets the conditions for approval. He can approve modifications or variations in the deed of trust so long as he determines that they are not prejudicial to the interests of state residents or the branch's U.S. policyholders or creditors.

§§ 18(d)(e), 20(e) — Commissioner's Powers

The commissioner may:

1. examine the trust assets of any authorized U.S. branch, at the alien insurer's expense;

2. require the trustees to file a statement, in a form the commissioner prescribes, certifying the amounts and assets in the trust fund;

3. revoke the alien insurer's insurance license or liquidate the U.S. branch if a trustee violates or refuses to comply with the bill's provisions; and

4. commence an insolvency proceeding against a U.S. branch whose condition is such, based on the quarterly or annual statements or a report indicating that its trust account balance has fallen below the minimum required level, that continuing in business would jeopardize its U.S. policyholders, creditors, or the public.

§ 19 —Reporting Requirements

The bill requires the branch to file two types of annual and quarterly statements with the commissioner and NAIC. In both cases, an annual statement must be filed by March 1 annually and quarterly statements by May 15, August 15, and November 15. In addition to the information described below, both types of statements must include any information the commissioner requires relating to the insurer's total business or assets, or any part of them.

The first type of statement covers the (1) U.S. insurance business the branch transacted, (2) the assets held by or for the branch within the United States to protect U.S. policyholders and creditors, and (3) the liabilities incurred against these assets. The statement may not contain any information regarding the alien insurer's or its branch's assets and business outside the United States. The statements must be in the same format required of an insurer domiciled in Connecticut and licensed to write the same kinds of insurance.

The second type of statement describes the amount of the trusteed surplus. The "trusteed surplus" is the total value of the branch's general state deposits and assets in the trust account, plus accrued investment income on them where the state collects this interest for the trustees, minus the total net amount of the branch's U.S. reserves and other liabilities. The branch must modify this amount using the procedure described below under "Trusteed Surplus."

A manager, attorney-in-fact, or authorized assistant manager of the U.S. branch must sign and verify the annual statements. The trustees of a trust that holds securities and other property must certify these holdings in the annual statement of trusteed surplus.

Each examination report of the U.S. branch must include a statement of the trusteed surplus as of the date of the examination in addition to the general statement of the branch's financial condition.

§§ 17, 19(a)(2) — Trusteed Surplus

For the annual and quarterly statements on the net amount of its trusteed surplus, the branch must add back the liabilities used to offset admitted assets reported on the corresponding report. The branch must then deduct:

1. unearned premiums on insurance producers' balances or uncollected premiums up to 90 days past due, up to the unearned premium reserves carried on them;

2. reinsurance on losses with authorized insurers, less unpaid reinsurance premiums;

3. reinsurance recoverables on paid losses from unauthorized insurers that are included as assets in the corresponding statement, but only to the extent a liability for the unauthorized recoverables is included in the liabilities report in the trusteed surplus statement;

4. special state deposits held in any state for the exclusive benefit of the branch's policyholders, or policyholders and creditors, not exceeding net liabilities reported by the branch for that state;

5. secured accrued retrospective premiums;

6. for life insurers, (a) the amount of its policy loans to U.S. policyholders, up to the amount of legal reserve required on each policy and (b) the net amount of uncollected and deferred premiums; and

7. any other non-trusteed asset that the commissioner determines secures liabilities in a substantially similar manner.

§ 21 — Domestication of the Branch

The bill establishes a procedure under which an alien insurer can domesticate its Connecticut-licensed U.S. branch. Doing so requires the commissioner's prior written approval.

The alien insurer must enter into a written agreement with a Connecticut insurer under which the Connecticut insurer will succeed to all the branch's business and assets and assume all of its liabilities. The alien insurer must approve the agreement under the laws of the country where it is organized. The Connecticut insurer's president or vice-president must execute the agreement, its board of directors must approve it, and its secretary must certify the agreement under the insurer's corporate seal.

The insurers must submit their respective copies of the executed agreement and certified copies of their corporate proceedings approving it to the commissioner. The commissioner must approve the agreement if he finds that (1) it complies with the bill's requirements

and (2) it will not materially harm the interests of the branch's policyholders and the Connecticut insurer. The commissioner must approve or disapprove the agreement with 60 days after receiving the later of the insurer's submissions.

The alien or Connecticut insurer must file a certified copy of the instrument of transfer and assumption of assets and liabilities. The instrument must be in a form satisfactory to the commissioner and executed by an authorized representative of each insurer.

The transfer is effective upon the commissioner's approval and the filing of the instrument with the commissioner. At that point, all of the branch's rights, franchises, and interests in property and all of its liabilities and actions related to it are transferred to the Connecticut insurer.

The commissioner must direct the trustee of the branch's trusteed assets to pay or transfer them to the Connecticut insurer. All deposits of the branch held by the commissioner, or by state officers or other state regulatory agencies, must be deemed to be held as security for the satisfaction by the Connecticut company of all liabilities to be assumed from the branch. The deposits must be (1) deemed to be assets of the Connecticut insurer and (2) reported as such in the annual financial statements and other reports the Connecticut insurer must file. Upon the ultimate release of the deposits by the commissioner, state officer, or regulatory agency, the cash or securities constituting the released deposit must be paid or delivered to the Connecticut insurer as lawful successor to the branch.

A number of laws refer to the age of a company. With regard to these laws, the age of the Connecticut insurer is the age of the older of the two companies involved in the agreement.

§ 22 — Trusteed Surplus for Alien Insurers

By law, an alien property, marine, or casualty insurance company cannot be licensed to transact business in Connecticut unless it has a trusteed surplus that is at least as great as that required for similar out-

of-state insurance companies. The bill makes a conforming change redefining "trusteed surplus" for this purpose.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute
Yea 19 Nay 0 (03/13/2014)